IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 27037 of 2003(R)

PETITIONER:

SUJESH V.,
PARACKAL HOUSE, KURUPPATHARA, MUDAPPELLUR P.O.,
PALAKKAD, PIN-678 705.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.R.ANISON

RESPONDENTS:
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1. **THE COMMISSIONER FOR ENTRANCE EXAMINATION, SANTHI NAGAR, HOUSING BOARD BUILDING, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR, CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION, KERALA, CO-OPERATIVE BANK TOWER, PALAYAM, THIRUVANANTHAPURAM.**

3. **THE PRINCIPAL, COLLEGE OF ENGINEERING (CAPE), TRIKARIPUR, CHEEMENI P.O., KASARGOD-671 313.**

4. **THE PRINCIPAL, K.M. C.T. COLLEGE OF ENGINEERING, MANASSERY, KOZHIKODE.**

BY GOVERNMENT PLEADER SMT.DEEPA K.R.
SRI.K.P.DANDAPANI (SR)
SRI. MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C NO.27037/2003

APPENDIX

PETITIONER'S EXHIBITS

EXTP1:- COPY OF THE ADMIT CARD DT.20.6.03.

EXT.P2:- COPY OF THE RECEIPT DT.20.6.2003, ISSUED BY THE 3RD RESPONDENT.

EXT.P3:- COPY OF THE RECEIPT DT.3.7.03 ISSUED BY THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE RECEIPT DT. 3.7.2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE SELECTION MEMO DT.1`3.8.03 ISSUED BY THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE OPTION FORM DT.19.6.2003 ISSUED TO THE PETITIONER AT THE TIME OF COUN SELLING.

RESPONDENTS EXHIBITS

EXT.R2(1):- G.O.(Rt) NO.718/03/H.EDN DT.26.5.03 OF THE GOVERNMENT OF KERALA HIGHER EDUCATION (G) DEPARTMENT.

EXT.R2(2):- COPY OF THE NOTIFICATION NO.C.2171.CAPE DT.26.5.03 PUBLISHED BY THE GOVERNMENT.

EXT.R3(3):- COPY OF THE G.O.(Rt) NO.744/03/H.EDN. DT.29.5.03 OF THE GOVERNMENT OF KERALA , HIGHER EDUCATION (G) DEPARTMENT.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.27037 OF 2003-R

Judgment

The petitioner was a student, admitted in the third respondent's college for B. Tech course on 20.06.2003 in the Management quota. Later, as per Ext.P5 allotment letter dated 13.08.2003, he was allotted to the 4th respondent's college in the merit quota. He was directed to report before the 4th respondent on or before the 27th of August 203. Since the 3rd respondent did not give the transfer certificate and the mark list of the qualifying examination, the petitioner approached this Court filing this Writ Petition. He also prayed for refund of the fee paid by him. Pursuant to the interim order, the mark list and the transfer certificate were furnished to the petitioner and he joined the 4th respondent's college. The dispute that remains to be resolved is whether he is entitled to get refund of the fee paid by him while he was admitted in the 3rd respondent's college. The petitioner relies on Clause 12.2.1 of the Prospectus for Admission to the Professional Degree Courses, Kerala, published by the Commissioner for Entrance Examinations. The relevant portion of the said clause reads as follows :

> "*No fees will be refunded after the last date for closing the admission. Refund of fees will be applicable only to the students, who leave the college on or before the last date of closing of admission and who claim refund within sixty days.*"

The petitioner submits, in view of the above clause, he is entitled to get refund of the fee, as he left the college, before admissions were closed.

2. Respondents 2 and 3 have filed a counter affidavit, resisting the prayers in the Writ Petition. Along with the counter affidavit, they have produced Ext.R2 (3) order issued by the Government. The said order reads as follows :

> *"As per the G.O. referred, Government have issued orders, regarding the admission procedures and fee structure applicable to Self Financing Engineering Colleges in the State for the year 2003-04.*
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> *Accordingly, Colleges owned by the IHRD, LBS Centre, CCE, CAPE and KSRTC have planned a Common Counselling for admission to the management quota seats starting from 6th June 2003. A doubt has arisen as to whether students joining these colleges under the management quota seats will be eligible for refund of fees, if they are allotted by the Commissioner for Entrance Examinations to other institutions. Government are pleased to order that such students who are allotted by the Commissioner for Entrance Examinations to Government or Aided Engineering Colleges or to courses other than Engineering, during the first round of counselling will be eligible to get the fee refunded."*

As per the above order, the third respondent submits, the petitioner can claim refund, if only he is allotted to a Government/aided college or to a course other than engineering course, during the first round of counselling.

3. The third respondent also relies on Ext.R2(2), which says that fees once paid will not be refunded or transferred to another institution, under any circumstance, except as provided by the Government. So, the third respondent would submit that the petitioner is not entitled to get refund of fees, unless he is covered by Ext.R2(3). The petitioner cannot take the benefit of Ext.R2(3) as he has not been admitted in a Government/aided college or to a course other than an engineering course.

4. I think, the clause 12.2.1, relied on by the petitioner will not apply to his case because the prospectus deals with the students, who are admitted by the Commissioner for Entrance Examinations. The petitioner was admitted in the 3rd respondent's college under the management quota and not on the allotment by the Commissioner for Entrance Examinations.

5. The petitioner joined the course on the basis of Ext.R2(3) notification with open eyes. He joined the college in the management quota. So, he can claim refund of the fees paid by him, if only there is a Government order in his favour. The petitioner has not produced any Government order, which entitles him to get refund of fee. He is bound by Ext.R2(2) notification based on which he has been

admitted. So, he can claim refund if only he is covered by Ext.R2(3), which is a Government order issued in terms of Ext.R2(2). Therefore, the claim for refund of fee fails and the Writ Petition, to the extent he claims refund of fee, is dismissed. But, it is ordered that the interim order based on which the mark list, transfer certificate etc. have been issued to him, is made absolute.

11.01.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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